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Proposed Regulation Agency Background Document

Agency name	Board (Department) of Education
Virginia Administrative Code (VAC) citation	8 VAC 20 -131
Regulation title	Regulations Establishing Standards for Accrediting Public Schools in Virginia
Action title	Amendments to the Standards of Accreditation
Document preparation date	July 1, 2005

This information is required for executive review (www.townhall.state.va.us/dpbpages/apaintro.htm#execreview) and the Virginia Registrar of Regulations (legis.state.va.us/codecomm/register/regindex.htm), pursuant to the Virginia Administrative Process Act (www.townhall.state.va.us/dpbpages/dpb_apa.htm), Executive Orders 21 (2002) and 58 (1999) (www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html), and the *Virginia Register Form, Style and Procedure Manual* (http://legis.state.va.us/codecomm/register/download/styl8_95.rtf).

Brief summary

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

Section 22.1-253.13:3 of the Code of Virginia requires the Board of Education to establish standards for accreditation. The regulations were last amended in 2000. Since that time, public schools in Virginia have implemented more rigorous requirements for accountability both at the school level and the student level. Now that most Virginia schools are fully accredited, and the first high school class required to earn verified units of credit has graduated from high school, the Board undertook a comprehensive review of the regulations to determine if there are changes that might be needed. Substantive changes proposed are related to additional options for students to meet the requirements for graduation, the methodology for calculating accreditation ratings, greater flexibility for transfer students, more rigorous benchmarks for accreditation, and better defined sanctions for schools, superintendents, and school boards if a school loses its accreditation. The Administrative Process Act requires the Executive Branch to review and approve proposed regulations before they can be released for public comment. In consideration of the Governor's Healthy Virginians initiative, the Governor has asked that the Board of Education consider two additional revisions to the proposed accrediting regulations that will help promote the health and physical

fitness of elementary and middle school students. The recommended revisions would require all elementary and middle schools to require students to participate in a program of physical fitness during the regular school year in accordance with guidelines established by the Board of Education.

Basis

Please identify the state and/or federal source of legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly bill and chapter numbers, if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Section 22.1-19 of the Code of Virginia requires that the Board of Education "... provide for the accreditation of public elementary, middle, and high schools in accordance with standards prescribed by it." Further, the Standards of Quality for Public Schools in Virginia (SOQ), in § 22.1-253.13:3.F of the Code of Virginia, requires that local school boards "... maintain schools which meet the standards of accreditation prescribed by the Board of Education." The current standards were adopted in September 2000. This action by the Board of Education is mandatory.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal and the problems the proposal is intended to solve.

This action is essential to protect the health, safety, and welfare of the commonwealth's most vulnerable citizens-its school-age population. The goals of the proposal are to strengthen the quality of instruction in public schools in Virginia and to bring the standards into conformity with amended or new state and federal laws. These regulations form the basis for the day-to-day operation of the educational program in each public school in Virginia. The regulations contain provisions to govern philosophy, goals and objectives; academic achievement; school accountability; building and student safety and instructional support services; school leadership; involving and reporting to parents; and procedures for accreditation.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the "Detail of changes" section.)

There are a number of substantive changes to the regulations, most notably in 8 VAC 20-131-300 addressing the calculation of accreditation ratings. A phase-in of new requirements is being proposed. Other substantive changes are found in 8 VAC 20-131-50 where additional options for students to meet the requirements for diplomas have been proposed. Changes have been proposed in 8 VAC 20-131-340 to increase the sanctions on schools and school boards should a school have its accreditation denied.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

If the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

The primary issue with the proposed regulatory action is that the proposed revisions to the standards more closely align the state’s school accountability program with the requirements of the federal No Child Left Behind Act of 2001. The changes are necessary to close gaps between the two programs and to alleviate the requirements on schools to meet the rigors of two accountability programs. The federal law requires that there be a single accountability program. In addition, the proposed regulatory action includes revisions that better define sanctions for schools, superintendents, and school boards if a school receives a rating of Accreditation Denied.

The proposed revisions are advantageous to the public, the agency, and the Commonwealth at large in that they eliminate some requirements posed by different accountability programs making it easier for the public to understand both. There are no disadvantages.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures	There is minimal cost to the state to implement and enforce the proposed regulation. Existing budgets should be sufficient to fund the state’s responsibilities.
Projected cost of the regulation on localities	It is anticipated that additional costs would be minimal and insignificant. However, it is not possible to estimate the cost of the regulation on localities with schools rated Accreditation Denied as those schools will have varying sanctions that may have a range of costs based on the sanctions imposed.
Description of the individuals, businesses or other entities likely to be affected by the regulation	Public elementary, middle and secondary schools, local school boards and local school officials will be affected by the regulation.
Agency’s best estimate of the number of such entities that will be affected	There are approximately 1830 elementary, middle, and secondary schools in 132 school divisions in the state. Each school division has a school board with varying numbers of members and a superintendent.
Projected cost of the regulation for affected individuals, businesses, or other entities	It is not possible to estimate the cost of the regulation due to the varying nature of the 132 school divisions. However, the cost should be minimal since the proposed regulation does not

	impose additional requirements to individuals, businesses or other entities in the localities.
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Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

Enter statement here

Public comment

Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.

Commenter	Comment	Agency response
None	None	

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

Schools are important institutions in communities. The impact of the proposed regulatory action on the institution of the family will be continued improvement in the public education system to help ensure that children have the opportunity to receive a quality education and preparation for adulthood whether they move on to higher education, the military or the work force. Students must be adequately prepared for the future in order to lead productive lives. Being productive and successful will increase the potential for strong stable families.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
	20-131-5	N/A	Consolidates definitions currently found throughout the regulations into one section and adds new ones.
20-131-10		Language setting forth the purpose of the regulations	Adds new language to clarify that the standards are intended for public schools. Schools licensed under other state statutes are exempt from these requirements.
20-131-20		Language setting forth philosophy, goals, and objectives of the regulations	Inserts increasing graduation rates as one of the goals and objectives of the regulations.
20-131-30		Sets expectations for students who must be tested in grades K-8	<p>Adds language relating to the grade level of the content clarifying questions that have been raised over the years concerning how to handle certain students who receive instruction on different grade levels in different subjects.</p> <p>Removes redundant language from the provision.</p> <p>The terms “literature” and “research” are deleted since remediation recovery is only for the reading test, not the writing test.</p> <p>Aligns expectations for children with disabilities and limited English proficiency with requirements of the Individuals with Disabilities Education Improvement Act and the No Child Left Behind Act of 2001.</p> <p>Remediation recovery is expanded from K-8 to K-12 in English (reading) and mathematics. The retesting provision would no longer be needed with annual testing in grades three through eight.</p> <p>The application of remediation recovery to a school’s accreditation ratings would continue to be defined in Board guidelines.</p> <p>Language is added to reference § 504 plans, as well as Individualized Education Programs (IEP) for students with disabilities.</p> <p>Language is added to address testing of Foreign exchange students. Foreign exchange students would be required to take Standards of Learning (SOL) tests when</p>

			taking courses for credit, but would not be required to take the tests for courses if they audit the course.
20-131-40		Sets requirements for literacy passport tests, GED, and other credentials.	Repeal the section. Literacy Passport Tests are no longer required and other credentials are established in state law or other regulations.
20-131-50		Sets graduation requirements and honors.	<p>Language regarding additional requirements for a diploma is included due to action taken by the Board of Education in 2000 to extend the approval of existing additional requirements indefinitely or until changed by the local school board.</p> <p>Provides for the extension of the option for locally awarded verified credits.</p> <p>Permits technical certifications or demonstration of occupational competency to substitute for up to two verified units of credit to satisfy graduation requirements or to satisfy the requirement for demonstration of literacy and numeracy for the Modified Standard Diploma.</p> <p>Language regarding Certificates of Program Completion has been moved to a different subsection since such certificates are not diplomas. Additional language is modified for clarification.</p> <p>Additional revisions remove obsolete language.</p> <p>In the various diploma requirements charts the term "Practical arts" is changed to "career and technical" to update and clarify terminology.</p> <p>The new footnote number 6 provides an incentive for students to complete a career and technical program and pursue professional certification as an alternative to the requirement of having to earn verified credits in academic areas.</p> <p>In the footnote language listing courses has been removed for clarity. Language is added for parallelism with the structure of the other footnotes.</p> <p>Terminology is corrected regarding the IEP.</p> <p>Redundant language requiring written consent has been removed. The preceding provision requires the IEP team to make the</p>

			<p>decision regarding a student’s pursuit of the Modified Standard Diploma. In Virginia, a parent is required to provide written consent to implementation of an IEP pursuant to the <i>Regulations Governing Special Education Programs for Children with Disabilities in Virginia</i> at 8 VAC 20-80-10 et seq.</p> <p>Language is reorganized in subsection D to emphasize that the Standard or Advanced Studies diploma shall be pursued by all students unless an IEP team determines a student with a disability is unlikely to meet credit requirements for such diplomas. The IEP team must determine that a student with a disability will pursue a Modified Standard Diploma.</p> <p>Language is added to identify all of Virginia’s diploma types in accordance with the Standards of Quality.</p> <p>Language is added to increase the requirements for students to receive the Governor’s Seal on their diploma. New requirements incorporate provisions of the Early College Scholars program criteria for the seal.</p> <p>Language is amended to award the Board of Education seal to students with an A average who achieve the Advanced Studies Diploma. Language is also added to this section to add the Excellence in Civic Education Seal to the list and description of available awards pursuant to General Assembly action in § 22.1-253.13:4.</p> <p>The inclusion of occupational competency assessments in the Standards of Accreditation is made pursuant to SJ 403 of the 2005 General Assembly, which calls for the study of the permanent use of industry certifications and state tests for the award of verified units of credit.</p>
20-131-60		Establishes provisions for handling students who transfer into public schools.	<p>Clarifies local responsibility for grade placement of students in grades K-8.</p> <p>Clarifies terminology used in the standards relating to when students enter school.</p> <p>Clarifies which accrediting agencies are acceptable for automatic acceptance of credit from other accredited schools.</p> <p>Removes unenforceable and obsolete</p>

			<p>language.</p> <p>Clarifies the level of flexibility local schools have to accept courses in transfer from out-of-state schools where graduation requirements may differ from Virginia's.</p>
20-131-70		Sets requirements for instructional programs in general	<p>A technical change clarifies that students with disabilities may be those identified under IDEA or § 504.</p> <p>A typographical error in a regulations citation is corrected.</p>
20-131-80		Sets requirements for instructional programs in elementary schools.	<p>Relocates language relating to recess to another section of the regulations to avoid confusion concerning the definition of instructional time.</p> <p>Language is added to require students to participate in a program of physical fitness during the regular school year in accordance with guidelines established by the Board of Education.</p> <p>Language is added to parallel language formerly in 8 VAC 20-131-160 to emphasize the importance of reading in the school curriculum at all levels.</p>
20-131-90		Sets requirements for instructional programs in middle schools.	<p>Language is added to require students to participate in a program of physical fitness during the regular school year in accordance with guidelines.</p> <p>Amends the instructional program requirements to require Algebra I to be available to all students in the 8th grade.</p> <p>Language is added to parallel language formerly in 8 VAC 20-131-160 to emphasize the importance of reading in the school curriculum at all levels.</p>
20-131-100		Sets requirements for instructional programs in secondary schools.	<p>Language is amended to require providing students access to at least three Advanced Placement courses, college-level courses for credit, or International Baccalaureate courses to make it possible for students to earn the Governor's Early College Scholars Seal on the Advanced Studies Diploma.</p> <p>Language has been moved from 8 VAC 20-131-160 to emphasize the importance of reading in the school curriculum at all levels.</p>
20-131-110		Sets requirements for awarding standard and verified credit.	<p>Removes the restriction of alternate means of awarding credit to core academic courses to make it consistent with 20-131-180.</p> <p>Language is added to permit the continuation of locally awarded verified credit in science</p>

			<p>and history. Locally awarded verified credits were originally provided for by Chapter 577 of the Acts of Assembly of 2002.</p> <p>Adds language to permit the Board of Education to accept end-of-course tests from other states in the future.</p> <p>Language is added to clarify that students seeking a Modified Standard Diploma may have the opportunity for an expedited retake of a SOL assessment to complete literacy and numeracy requirements.</p> <p>Obsolete language is removed.</p>
20-131-140		Sets requirements for college preparation programs and opportunities for postsecondary credit.	<p>Language has been added to require the provision of counseling of students in obtaining industry certifications, occupational competency credentials, or professional licenses to help prepare students who may not attend an institution of higher education for entering the workforce.</p> <p>Language has been added to require students to have access to at least three AP courses or three college level courses.</p>
20-131-150		Defines the standard school day and school year.	<p>Deletes language that permits school divisions to develop alternate schedules to the 180 day/990 instructional hour requirements. This language is in conflict with § 22.1-98 of the <i>Code</i> that requires a minimum school year of 180 days or 990 instructional hours. School divisions may not do less than the <i>Code</i> requires but do not need permission to exceed the requirements of the <i>Code</i>.</p> <p>The addition of the work “recess” is to emphasize that it should not be counted as instructional time.</p>
20-131-160		Sets requirements for additional reading instruction.	<p>Repeal this section. Language from this section has been moved into the sections addressing the instructional program to emphasize the importance of reading in the school curriculum at all levels.</p>
20-131-180		Establishes provisions for homebound instruction and use of correspondence or distance learning opportunities.	<p>Adds language to clarify instructional requirements for certain homebound students.</p> <p>A clerical error is corrected.</p>
20-131-200		Sets parameters for extracurricular activities and recess.	<p>Incorporates language regarding recess that was stricken from 20-131-80.</p>
20-131-210		Establishes the role of the	<p>Amends the standards to address the</p>

		principal.	provision in Standard 4 of the SOQ regarding the responsibility of local school boards to notify parents of student graduation requirements (§22.1-253.13:4A.).
20-131-240		Establishes staffing requirements for schools.	<p>Strikes redundant language that is included in the SOQ and unnecessary in these regulations.</p> <p>Removes antiquated and confusing language from the regulation.</p> <p>Conforms to requirements in the SOQ that requires local school boards to provide a planning period for all middle and high school teachers.</p> <p>Language is deleted that requires schools to report the extent to which unencumbered lunch is provided. There is no state requirement for an unencumbered lunch.</p>
20-131-260		Sets requirements for school facilities and safety.	<p>Language referencing Board of Education regulations pertaining to facilities is deleted since the board does not maintain any regulations that exceed the Uniform Statewide Building Code.</p> <p>Language added to emphasize the need for schools to have policies addressing the handling of student medications.</p> <p>Language is added to emphasize the need for schools to have plans for evacuating persons who may need assistance due to special physical, or medical needs, or who may need assistance due to limited English proficiency.</p> <p>The language regarding allergic reactions is also added to address the growing prevalence of student allergies and the dangers that they may pose if not addressed.</p>
20-131-270		Establishes communications procedures for schools	<p>Amends the regulation to better align state reporting requirements with those of the No Child Left Behind Act (NCLB).</p> <p>Amends the regulation to conform to new reporting requirements in the SOQ.</p> <p>Amends the regulation to remove a fiscal and administrative burden on schools to provide certain material to parents and eliminates an additional certification requirement on the division superintendent.</p> <p>Removes two requirements for reporting information that is reported to the</p>

			<p>Department and to the public through other means.</p> <p>A requirement would be added to provide information on the School Report Card on the number of students obtaining industry certifications and passing state licensure assessments and occupational competency assessments while still in high school. (This is consistent with language in SB 1045 passed by the 2005 General Assembly.)</p>
20-131-280		Establishes expectations for school accountability.	<p>The entire section has been reorganized for clarity, consistency, and brevity.</p> <p>Language clarifies what accreditation ratings are based and how student test scores are included in the calculation of accreditation ratings.</p> <p>Clarifying language has been added to the section on special purpose schools. This language clarifies that special purpose schools must seek approval from the Board before implementing an alternative accreditation plan. The Board's approval of an alternative accreditation plan is not guaranteed.</p> <p>Redundant language regarding LEP students has been eliminated. Language regarding the LEP one time exemption is already stated in 8 VAC 20-131-30 G.</p> <p>Language is added subsection to clarify that if a transfer student has received instruction in the content area the student must take the applicable SOL test.</p> <p>Language on home instruction has been added to the list of transfer students who are expected to take the tests.</p> <p>Language moved from 8 VAC 20-131-340 B. is included in this section as part of a reorganization of the regulations to provide clarity. Due to the constant evolution of testing requirements mandated by federal law this provision permits the board to address new testing requirements, create and administer new tests, and provide for the consideration of such requirements and new tests in the calculation of accreditation.</p> <p>Eliminates language relating to provisional accreditation, which is no longer available to schools.</p>
20-131-290		Defines the pre-accreditation eligibility	Amends the regulation to be consistent with the accrediting cycle established in 20-131-

		<p>process.</p>	<p>280 and aligns the requirements with existing practice.</p> <p>Clarifies that student achievement on SOL and other tests form the primary basis for determining the accreditation status of a school</p> <p>Removes a separate reporting requirement for division superintendents and comports to existing practice.</p>
<p>20-131-300</p>		<p>Establishes accreditation ratings.</p>	<p>Eliminates obsolete language. Previous language was time/date specific.</p> <p>Language is added to address implementation of annual testing.</p> <p>Amendments provide for a phase-in of higher standards for accreditation ratings earned in the 2009-10 school year to be applied to the 2010-2011 school year.</p> <p>Provisionally Accredited/Meets State Standards language is obsolete and has been deleted.</p> <p>Accredited with Warning rating is obsolete and has been deleted due to the period of time having passed. Language is also deleted for clarification.</p> <p>Language is added to clarify that beginning with accreditation ratings earned in 2005-06 a school may be rated Accreditation Denied for the 2006-07 school year if it has been Accredited with Warning for the three years preceding 2006-07.</p> <p>Accreditation Withheld/Improving School Near Accreditation rating is eliminated due to a number of factors:</p> <ul style="list-style-type: none"> • There will likely be very few schools that have never been fully accredited in 2006. Also, if after 8 years a school has never reached full accreditation, accreditation denied may be the most appropriate rating for the school. • The data sets used to calculate accreditation ratings in 1999 are vastly different than those likely to be used in 2006. The 1999 sets were unadjusted pass rates (excluding only LEP by the Board's directive) and, more than likely the 2006 pass rates will have many adjustments making the two data sets like comparing apples to oranges. In addition, there will likely be few schools

			<p>that cannot demonstrate a 25% increase over 1999.</p> <p>Language regarding alternate assessments or alternative tests is added in the new for consistency with 8 VAC 20-131-280 and clarity.</p> <p>A new provision allowing reconstituted schools to be rated Conditionally Accredited would grant some relief to localities whose schools may be rated Accreditation Denied under circumstances outlined in 8 VAC 20-131-340.C.</p>
20-131-310		Establishes requirements for schools accredited with warning.	<p>Eliminates obsolete language about provisional accreditation.</p> <p>Through out the regulation language regarding research-based interventions have been added to clarify that schools must adopt interventions that have a proven track record of success.</p>
20-131-320		Established provisional accreditation benchmarks.	Repeals the entire section to eliminate obsolete language about provisional accreditation.
20-131-325		Established recognitions and rewards.	<p>Language is proposed to allow schools maintaining a pass rate of 95% or more on SOL or other tests to be accredited for a three-year period. Schools would continue to comply with the annual submission of preaccreditation documentation. This is designed to reward consistently high achieving institutions.</p> <p>Language regarding waivers of certain specified sections of the regulations has been eliminated due to the fact that few if any schools have requested such waivers since their availability.</p> <p>The timeframe established for the original award has expired making the language obsolete. A new award is established to recognize schools that are high achieving institutions that are addressing the achievement needs of the student subgroup population.</p>
20-131-340		Establishes sanctions for poorly performing schools.	Amends the regulation to set forth sanctions for schools rated Accreditation Denied.

Enter any other statement here